IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 21230 of 2004

Between:

1 Susheel Kishen Waghray, S/o.Late R.Chain Rai,
R/o.8-2-293/A/2, Flat 2, site 2, Phase-II,

Film Nagar, Jubilee Hills, Hyderabad.

2 Sujeet Kishen Waghray, S/o.Late R.S.Kishen
R/o.H.No.5-9-35/1, Basheer Bagh Hyderabad.

..... PETITIONERS

AND

1. Commercial Tax Officer, Hydernagar Circle, Hyderabad.

2 Deputy Commercial Tax Officer, Hydernagar Circle,

Hyderabad.

3 M/s Chalvybh Techno Pvt. Ltd., Unit No.72 A,

Phase I & II, Sri Venkateshwar Co-op. Industrial Estate,

Balanagar, Hyderabad.

4 M/s Vasi Reddy Educational Society Rep. by its President

Mr.V.S.Amarnath, 4-1-1241, King Koti, Hyderabad

(Sai Sadan Complex).

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in issuing the impugned demand in Form No. 4 under Revenue Recovery Act dt. 31-7-2004 and the notice under section 17 of the APGST Act dt. 26-10-2004 as illegal, arbitrary, without authority of law, contrary to the provisions of the APGST Act and set aside the same.

For the Petitioners: MR. BHASKAR REDDY VEMIREDDY, Advocate.

For Respondent Nos.1 and 2: Special Standing Counsel for Commercial Taxes.

The Court at the admission stage made the following Order: (per Sri B. Sudershan Reddy, J)

Heard the learned counsel for the petitioners and the learned Standing

Counsel appearing on behalf of respondents 1 and 2 and at their request, the matter is taken up for final disposal at the admission stage. Issue rule nisi.

The petitioners invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Mandamus declaring the action of the Deputy Commercial Tax Officer, the 2nd respondent herein in issuing the impugned demand in Form No.4 under the Revenue Recovery Act dated 31-7-2004 and the notice under Section 17 of the APGST Act, 1957 dated 26-10-2004 as illegal and arbitrary.

The petitioners claim to be the owners of the property in question. It is stated that the property was let out to the 4th respondent for running an educational society. The 2nd respondent issued the proceedings in Form No. 4 under the Revenue Recovery Act dated 31-7-2004 demanding an amount of Rs.4,94,305/- on the ground that the 3rd respondent fell in arrears of sales tax for the assessment years 1996-1997 to 2001-2002 under the provisions of the APGST Act, 1957. The contention of the petitioners is that they are the exclusive owners of their share in the property bearing No. 4-1-1241, Sai Sadan Complex, King Koti, Hyderabad and they have nothing to do with the arrears of the sales tax and the default, if any committed by the 3rd respondent and therefore, the authorities cannot proceed against the property in question.

During the course of hearing of this writ petition, learned counsel for the petitioners made available a copy of the final decree in partition suit passed in O.S NO. 541 of 1981 dated 20-9-1988 which prima facie supports the contention urged by the petitioners. But the fact remains that the petitioners have not filed this document before the respondents and did not place the relevant facts and it is under those circumstances, the respondents appear to have initiated the proceedings for realization of the arrears of the tax under the provisions of the Revenue Recovery Act.

Having heard the learned counsel for the petitioners and the learned Standing Counsel appearing on behalf of the Department and on a consideration of the facts and the material available on record, we are of the considered opinion that no relief as prayed for could be granted in this writ petition. Interests of justice would be met by directing the petitioner to approach the 2nd respondent and make an

appropriate representation in addition to the representation stated to have been already made and file all the documents that are filed before us, which shall be duly taken into consideration by the 2nd respondent. The 2nd respondent is accordingly directed to pass an appropriate speaking order after considering the representation/objections to be filed by the petitioners along with the relevant documents. The petitioners shall make the representation within one week from today and the same shall be considered by the 2nd respondent within a period of two weeks from the date of filing of such a representation. It is needless to observe that the impugned proceedings shall not be given effect to until the 2nd respondent takes an appropriate decision in the matter.

The Writ Petition is accordingly disposed of.

(B. Sudershan Reddy, J)

25-11-2004

(T.Ch. Surya Rao, J)

ks

Note: Furnish copy of the order by tomorrow.

B/O

Ks

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. Commercial Tax Officer, Hydernagar Circle, Hyderabad.

2 Deputy Commercial Tax Officer, Hydernagar Circle,

Hyderabad.

3 Two CD copies.

4. The Spl. G.P for Commercial Taxes, High Court of A.P.,

Hyderabad (OUT).